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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,430	08/21/2003	Gilles Baudin	NONY 3.0-007	8467
530	7590	08/25/2005		
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER	KEASEL, ERIC S
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/645,430	BAUDIN, GILLES
	Examiner Eric Keasel	Art Unit 3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 December 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9 and 11-23 is/are rejected.
- 7) Claim(s) 10 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 21 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>8/21/2003</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### *Specification*

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because of the use of legal phraseology (e.g. "comprising" and "comprises"). Correction is required. See MPEP § 608.01(b).

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4-7, 14-16, 19-21, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Stull (US Patent Number 3,848,779).

Stull discloses a receptacle with a body (generally at 10) with an end wall (see Fig. 2), neck (generally at 18 and 36), and dispenser device (12) that is snap fastened to the neck (see column 3, lines 42 and 43). The indicators for positions 2 and 4 and the read as the steps on opposite sides of the neck in a join plane and the indicator for position 3 is read as the rib perpendicular to the join plane of the steps.

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5. Claims 1, 2, 4-7, 9, 11, 12, 14-17, 19, 20, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Morris, Sr. (US Patent Number 5,377,858).

Morris discloses a receptacle with a body (1, 6) and neck (4, 5) and oppositely disposed steps (35) and transverse to a pair of steps are the ribs (also 35). The end wall is flat (i.e. it retains its axial position) in each of four regions.

6. Claims 1, 4-8, and 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Ostrowsky (US Patent Number 3,993,208).

Ostrowsky discloses a blow molded (see column 2, line 7) receptacle with a body (12), neck (generally at 23) and oppositely disposed steps (32).

7. Claims 1-9, 11, 13, and 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Darlington (US Patent Number 3,900,123).

Darlington discloses a receptacle with a body (21), neck (25) and oppositely disposed steps (27). The lugs (27) that are perpendicular to the join plane to oppositely disposed steps are read as reinforcing ribs as they serve to reinforce the structure.

8. Claims 1, 4, 5, 9, and 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kusz (US Patent Number 5,687,863).

Kusz discloses a receptacle with an elliptical body, neck, and oppositely disposed steps (54, the transition between 64 and 56).

9. Claims 1, 2, 4, 5, and 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Fitjer (US Patent Number 5,160,057).

Fitjer discloses a receptacle with a body (2), neck (4), and oppositely disposed steps (9, 8). The neck includes an annular bead (9).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kusz.

Kusz discloses the join plane between the steps to be along the minor axis rather than the major axis. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have changed the orientation of the axis relative to the join plane between the steps because applicant has not disclosed that this particular orientation provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected applicant's invention to perform equally well with the plane in either axis because the device would function in a similar manner. Therefore, it would have been an obvious matter of design choice to modify Kusz to obtain the invention as specified in claims 2 and 3.

***Allowable Subject Matter***

12. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Keasel whose telephone number is (571) 272-4929. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Eric Keasel* 19AUG2005  
Eric Keasel  
Primary Examiner  
Art Unit 3754